

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MOBILE RELAY ASSOCIATES	)	WT Docket No. 14-34
	)	FCC File Nos. 0005916887-89
)	
FISHER WIRELESS SERVICES, INC.	)	FCC File No. 0006000144
)	
DAY MANAGEMENT CORPORATION	)	FCC File Nos. 0006000751, 0006013575
)	
SPECIALIZED MOBILE RADIO, INC.	)	FCC File No. 0006153963
)	
P & R COMMUNICATIONS SERVICE, INC.	)	FCC File Nos. 0006155937, 0006310401,
	)	0006310434
)	
SELF RADIO INC.	)	FCC File No. 0006159637
)	
WIZTRONICS, INC.	)	FCC File Nos. 0006223614, 0006223641
)	
COMTRONICS CORPORATION	)	FCC File No. 0006302595
)	
Requests for Waivers to Permit Part 90 Use of)	
Channels Between Part 90 and Part 74 Spectrum)	

ORDER

Adopted: June 16, 2014

Released: June 17, 2014

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us applications and requests filed by Mobile Relay Associates (MRA) for waiver¹ of Sections 2.106 and 90.35 of the Commission's Rules to permit MRA to operate on frequency pairs 451/456.0000 MHz, 451/456.00625 MHz, and 451/456.0125 MHz at locations in California,² Nevada,³ and Florida.⁴ While MRA's requests were pending, other entities submitted the above-captioned applications with similar waiver requests for use of one or more of the same frequency pairs or frequency pair 451/456.009375 MHz in various areas.⁵ For the reasons set forth below, we grant

¹ MRA filed a near-identical waiver request with each application. *See, e.g.*, Request for Rule Waiver (filed Sept. 3, 2013) (Waiver Request).

² *See* FCC File No. 0005916887 (filed Sept. 3, 2013).

³ *See* FCC File No. 0005916888 (filed Sept. 3, 2013).

⁴ *See* FCC File No. 0005916889 (filed Sept. 3, 2013).

⁵ *See* FCC File No. 0006000144 (filed Nov. 4, 2013 and amended Apr. 28, 2014) (Fisher Wireless Services, Inc.; Arizona and California); FCC File Nos. 0006000751 (filed Nov. 4, 2013) and 0006013575 (filed Nov. 14, 2013 and amended Dec. 4, 2013) (Day Management Corporation; Oregon and Washington); FCC File No. 0006153963 (filed Feb. 14, 2014 and amended Feb. 18, 2014) (Specialized Mobile Radio Inc.; New York and New Jersey); FCC File Nos. 0006155937 (filed Feb. 18, 2014), 0006310401 (filed June 3, 2014), and 0006310434 (filed June 3, 2014) (P & R Communications Service, Inc.; Ohio and Kentucky); FCC File No. 0006159637 (filed Feb. 18, 2014 and amended Apr. 11, 2014) (Self Radio Inc.; Texas); FCC File Nos. 0006223614 and 0006223641 (both filed Apr. 1, 2014 and (continued....))

the waiver requests in part and will process the applications accordingly. Specifically, we grant the requests with respect to frequency pairs 451/456.00625 MHz, 451/456.009375 MHz, and 451/456.0125 MHz, but not with respect to frequency pair 451/456.0000 MHz.

2. *Background.* Frequencies 451.0000 MHz, 451.00625 MHz, 451.009375 MHz, 451.0125 MHz, 456.0000 MHz, 456.00625 MHz, 456.009375 MHz, and 456.0125 MHz are allocated for land mobile operations,⁶ but currently are not designated for use on a primary basis by the Industrial/Business Pool or any other Commission service.⁷ Rather, they are on the band edges between Broadcast Auxiliary Service (BAS) spectrum and Industrial/Business Pool spectrum.⁸

3. MRA and the other applicants for frequency pairs 451/456.0000 MHz, 451/456.00625 MHz, and 451/456.0125 MHz seek assignment of these frequencies with a 4 kilohertz emission designator, which they contend will present no risk of harmful interference because the requested channels will not overlap any designated frequencies on either side, in light of the implementation of narrowbanding (maximum 12.5 kHz channel bandwidth or equivalent efficiency)⁹ by private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-470 MHz bands.¹⁰ The applicants for frequency pair 451/456.009375 MHz propose to operate with an 8 kilohertz emission designator, which they contend will not overlap any designated frequencies on either side. Further, MRA contends that there is widespread and increasing PLMR congestion in the areas in which it seeks relief.¹¹

4. The Wireless Telecommunications Bureau's Mobility Division (Division) sought comment on MRA's requests.¹² Most parties support MRA's waiver requests,¹³ but one commenter

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amended Apr. 4, 2014) (Wiztronics, Inc.; Washington); FCC File No. 0006302595 (filed May 28, 2014) (Comtronics Corporation; Massachusetts). Fisher Wireless Services, Inc. also filed application FCC File No. 0006156746 seeking authorization to operate on frequency pair 451/456.009375 MHz at three locations in California, but the application was returned on May 30, 2014 because it conflicted with MRA's application FCC File No. 0005916887.

⁶ See 47 C.F.R. § 2.106 (United States Table of Frequency Allocations). Consequently, we conclude that no waiver of Section 2.106 is required. See *Mobile Relay Associates, Order*, 29 FCC Rcd 660, 660 n.6 (WTB MD 2014) (*MRA GMRS Order*).

⁷ Medical Micropower Networks operate on a secondary basis in the 451-457 MHz band. See 47 C.F.R. §§ 2.106 note US64, 95.628(b).

⁸ See 47 C.F.R. § 90.35 (designating assignable 451/456 MHz band Industrial/Business Pool frequencies beginning with 451/456.01875 MHz).

⁹ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004) ; see also 47 C.F.R. §§ 90.203(j), 90.209(b).

¹⁰ See Waiver Request at 3.

¹¹ See *id.*

¹² See Wireless Telecommunications Bureau Seeks Comment on Requests of Mobile Relay Associates for Waivers to Permit Part 90 Use of Channels on the Band Edges Between Part 90 and Part 74 Spectrum, *Public Notice*, WT Docket No. 14-34, 29 FCC Rcd 1963 (WTB MD 2014).

¹³ See Enterprise Wireless Alliance comments; Rebel Communications, LLC comments; Forest Industries Telecommunications comments; Air Spectrum, Inc. comments; MRA comments and reply comments; Kenwood USA Corporation reply comments.

expresses concern about interference to BAS operations.¹⁴

5. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest,¹⁵ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest or the applicant has no reasonable alternative.¹⁶ Based on the record before us, we conclude that MRA has presented sufficient facts to meet the standard for grant of the requested waivers in part.

6. While MRA asserts that the requested channels will not overlap any designated frequencies on either side, we note that the proposed operations on frequency pair 451/456.0000 MHz would overlap the 450-451 MHz and 455-456 MHz bands. BAS low power auxiliary stations operate in the 450-451 MHz and 455-456 MHz bands.¹⁷ They are authorized to use the entire bands, so long as the emission bandwidth does not exceed the band edges.¹⁸ Because the proposed operations on frequency pair 451/456.0000 MHz would overlap BAS low power auxiliary station spectrum,¹⁹ we conclude that the purpose of the rules would not be served by assigning that channel for PLMR operations.²⁰ Therefore, the above-captioned applications will be dismissed to the extent that they propose operations on frequency pair 451/456.0000 MHz.²¹

7. With respect to frequency pairs 451/456.00625 MHz, 451/456.009375 MHz, and 451/456.0125 MHz, we conclude that the underlying purpose of the rules would not be served by application of the rules and that grant of the waivers is in the public interest. After the narrowbanding transition, the adjacent PLMR frequencies are no longer assignable for wideband operations, so there is no channel bandwidth overlap with MRA's requested frequency pairs. Nor is there overlap with any BAS spectrum. We conclude that the public interest would be served by permitting the assignment of these frequencies to alleviate PLMR congestion at the requested locations. It would further the purpose of the narrowbanding rules to permit the efficient use of scarce PLMR spectrum.

¹⁴ See Society of Broadcast Engineers (SBE) comments.

¹⁵ 47 C.F.R. § 1.925(b)(3)(i).

¹⁶ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁷ See 47 C.F.R. § 74.802(a). Devices authorized as low power auxiliary stations are intended to transmit over distances of approximately 100 meters for uses such as wireless microphones, cue and control communications, and synchronization of TV camera signals. 47 C.F.R. § 74.801. The maximum transmitter power in the 450-451 MHz and 455-456 MHz bands is one watt. 47 C.F.R. § 74.861(d)(1). In addition to the low power auxiliary station licensees reflected in our licensing database, low power auxiliary stations may be operated on a short-term basis under the authority conveyed by a Part 73 or BAS license without prior authorization, subject to conditions. See 47 C.F.R. § 74.24.

¹⁸ See 47 C.F.R. § 74.861(c).

¹⁹ MRA's waiver request accounted for BAS broadcast remote pickup station frequencies ending with 450/455.99375 MHz pursuant to 47 C.F.R. § 74.402(a)(4), but did not account for BAS low power auxiliary stations in the 450-451/455-456 MHz bands. See Waiver Request at 5-6.

²⁰ See SBE comments at 3, 5.

²¹ The affected applications are MRA's FCC File Nos. 0005916887-89; Self Radio Inc.'s FCC File No. 0006159637, which also requests frequency pairs 451/456.0000 MHz, 451/456.00625 MHz and 451/456.0125 MHz; and Wiztronics, Inc.'s FCC File Nos. 0006223614 and 0006223641, which request only frequency pair 451/456.0000 MHz.

8. The Division granted a similar request earlier this year.²² MRA requested a waiver to operate with a 4 kHz emission designator on frequency pairs on the band edges between Industrial/Business Pool spectrum and General Mobile Radio Service spectrum. The Division concluded that the underlying purpose of the rules would not be served by application of the rules because MRA's proposed operations would not spectrally overlap the occupied bandwidth of any currently assignable frequency, and the public interest would be served by permitting the assignment of the requested frequency pairs to alleviate PLMR congestion at the requested locations.²³

9. In addition, the Division's predecessor granted a similar waiver request in 2003.²⁴ The City of Burbank requested a narrowband frequency pair that was allocated for land mobile operations, but not designated for use by the Public Safety Pool or any other Commission service; rather, the frequencies were offset between Part 90 PLMR spectrum and Part 22 paging control spectrum. The Division's predecessor noted that a purpose of the frequency designations was to assign paging control channels under Part 22 with sufficient guard band spacing to adjacent Part 90 PLMR operations, and concluded that this purpose would not be served by application of the rules because there were no paging licensees on the adjacent Part 22 channel to incur interference.²⁵ The Division's predecessor also concluded that grant of the waiver request would serve the public interest by facilitating access to spectrum in a congested area.²⁶

10. Consequently, we grant MRA's request for waivers to operate on frequency pairs 451/456.00625 MHz and 451-456.0125 MHz in California, Nevada, and Florida. Further, we grant the waiver requests of Fisher Wireless Services, Inc.; Day Management Corporation; Specialized Mobile Radio Inc.; P & R Communications Service, Inc.; Self Radio Inc., and Comtronics Corporation to operate on the same frequency pairs or frequency pair 451/456.009375 MHz in various areas. We deny the requests of MRA, Self Radio Inc., and Wiztronics, Inc. for waivers to operate on frequency pair 451/456.0000 MHz.

11. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), and 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Requests for Waiver filed by Mobile Relay Associates on September 3, 2013, in conjunction with applications FCC File Nos. 0005916887, 0005916888, and 0005916889 ARE GRANTED IN PART AND DENIED IN PART as set forth above, and the applications SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

12. IT IS FURTHER ORDERED that the Request for Waiver filed by Fisher Wireless Services, Inc. in conjunction with application FCC File No. 0006000144 IS GRANTED, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

²² See *MRA GMRS Order*, 29 FCC Rcd at 662-63 ¶¶ 10-11.

²³ See *id.* at 661-62 ¶¶ 6-7.

²⁴ See *City of Burbank, California, Memorandum Opinion and Order*, 18 FCC Rcd 23770 (WTB PSPWD 2003) (*Burbank*). The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division (PSPWD) were assumed by the Public Safety and Critical Infrastructure Division (PSCID). See *Reorganization of the Wireless Telecommunications Bureau, Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003). Pursuant to a Commission reorganization effective September 25, 2006, certain duties of PSCID were assumed by the Mobility Division. See *Establishment of the Public Safety and Homeland Security Bureau, Order*, 21 FCC Rcd 10867 (2006).

²⁵ See *Burbank*, 18 FCC Rcd at 23772 ¶ 6; see also *County of Westchester, New York, Order*, 25 FCC Rcd 10843, 10848 ¶ 11 (PSHSB PD 2010) (similar).

²⁶ See *Burbank*, 18 FCC Rcd at 23772 ¶ 7.

13. IT IS FURTHER ORDERED that the Requests for Waiver filed by Day Management Corporation in conjunction with applications FCC File Nos. 0006000751 and 0006013575 ARE GRANTED, and the applications SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

14. IT IS FURTHER ORDERED that the Request for Waiver filed by Specialized Mobile Radio, Inc. in conjunction with application FCC File No. 0006153963 IS GRANTED, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

15. IT IS FURTHER ORDERED that the Requests for Waiver filed by P & R Communications Service, Inc. in conjunction with application FCC File Nos. 0006155937, 0006310401, and 0006310434 ARE GRANTED, and the applications SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

16. IT IS FURTHER ORDERED that the Request for Waiver filed by Self Radio Inc. in conjunction with application FCC File No. 0006159637 IS GRANTED IN PART AND DENIED IN PART as set forth above, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

17. IT IS FURTHER ORDERED that the Requests for Waiver filed by Wiztronics, Inc. in conjunction with applications FCC File Nos. 0006223614 and 0006223641 IS DENIED, and the applications SHALL BE DISMISSED.

18. IT IS FURTHER ORDERED that the Request for Waiver filed by Comtronics Corporation in conjunction with application FCC File No. 0006302595 IS GRANTED, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

19. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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